

Initial Statement of Reasons

Title 13, Division 1, Chapter 1

Article 2.1 – Commercial Driver’s Licenses

The Department of Motor Vehicles (department) is proposing to amend Sections 26.01 and 26.02 in Article 2.1, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to commercial driver’s licenses.

Vehicle Code section 15250 incorporates and adopts the federal commercial driver's license standards and issuance requirements for California. Among the federal standards is Section 383.73 in Title 49, Code of Federal Regulations (CFR), which requires an applicant for any commercial driver's license, including a commercial learner's permit, to provide proof to the issuing authority of his or her United States citizenship or proof of lawful permanent residency, and proof that he or she has residency in the issuing State. The federal regulation identifies the documents that are acceptable for establishing an applicant’s U.S. citizenship, lawful permanent residency, or non-domiciled commercial license or permit holders, and identifies the type of documents a state should require to establish the state residency requirement.

On October 7, 2016, the department published the Notice of Proposed Action, setting forth the proposed adoption of Sections 26.01 and 26.02 in Article 2.1. The adoption of Section 26.01 prohibits the department from issuing a commercial driver’s license without proof of the applicant's U.S. citizenship or lawful permanent residency, and proof of the applicant’s California residency being presented to the department. The adoption of Section 26.02 addresses the submission of citizenship and residency documents at the time of renewal, transfer, or upgrade of a commercial driver’s license or a commercial learner’s permit.

During the 45-day comment period, which ended on November 21, 2016, the department received no comments related to the proposed adoptions. The department submitted the final rulemaking action to the Office of Administrative Law on January 6, 2017. The action was approved on February 21, 2017 with an effective date of April 1, 2017. The department adopted emergency regulations, effective on April 19, 2017, that ensure applicants with an EAD or I-94 will be able to use those documents during the application process.

This proposed action will ensure the provisions adopted in the emergency action will become permanent and allow commercial drivers to continue to apply for and renew their commercial driver’s licenses with documents already available to them.

Problems This Proposed Regulation Intends To Address

The department has identified nearly 49,000 commercial driver’s license holders potentially at risk of losing their license because they have no qualifying legal presence documents. Those commercial driver’s license holders who lose their commercial driver’s license will likely lose their employment, resulting in serious harm to a large group of individuals.

Benefits Anticipated From This Proposed Action

The department anticipates this action will allow the affected commercial driver's license holders to maintain their commercial driver's licenses and maintain employment.

§ 26.01. Commercial Driver's License Citizenship and Residency.

This action amends section 26.01 to allow a person who is unable to provide the citizenship documents identified in Section 26.01(a), to provide a valid, unexpired EAD (form I-766, I-668A, or I-668B) or a valid, unexpired foreign passport with an approved I-94 form, to meet the legal presence requirements.

Federal rules permit States to accept EADs and I-94s, however, the department has determined it necessary to amend regulations to allow for the acceptance of these documents and ensure the large group of affected commercial driver's license holders are allowed to maintain their commercial driver's license and, in turn, continue with their employment.

Non-substantive amendments have also been made to Section 26.01 to include the following:

- The phrase 'U.S. citizenship or lawful permanent residency' is removed and replaced with 'legal presence.' The term 'legal presence' better encapsulates everybody with legal presence, rather than just those with U.S. citizenship or lawful permanent residency.
- Subsection (a) is amended to replace 'residency' with 'resident' and specifically requires the applicant to submit one of the documents identified in subsections (a)(1) through (a)(6).
- Subsections (b), (c), and (d) are re-lettered to subsections (c), (d), and (e), respectively.

§ 26.02. Citizenship and Residency Proof for Issuance, Renewal, Transfer or Upgrade of Commercial Learner's Permit or License.

Subsection (c) is adopted to specify that a commercial driver's license or a commercial learner's permit issued pursuant to documents submitted under Section 26.01(b) will be termed to expire on the same date as the expiration date returned by the Department of Homeland Security (DHS). The department will verify those documents identified in Section 26.01(b) with the DHS. The expiration date identified by the DHS will be the expiration date of the permit or license. This provision is consistent with the provisions of Section 15.03(e), which provides that the department may issue a driver's license or identification card termed to expire on the same date as the expiration date on the valid DHS document and is necessary to ensure the applicant will provided continued proof of citizenship at the time of renewal, transfer or upgrade. Subsection (c) also requires the applicant to resubmit an approved document when applying to renew or upgrade the commercial driver's license or commercial learner's permit. This provision will ensure that the department maintains the applicants continued legal presence.

DEPARTMENTAL DETERMINATIONS

- Technical, Theoretical and/or Empirical Studies, Reports or Documents: None.
- Reasonable Alternatives That Would Lessen Any Adverse Impact on Small Business: No alternatives were considered or presented that would lessen any adverse impact on small business.
- Evidence Supporting Determination of No Significant Adverse Economic Impact on Business, Including the Ability to Compete: This action proposes to fix a problem that will indirectly impact business. If a driver, who is employed by a business, is not able to provide sufficient proof of legal presence, that driver will be unable to maintain his or her commercial driver's license. A driver's failure to maintain a commercial driver's license will likely mean that he or she is no longer able to drive as part of his or her employment, which may impact the business. However, the department does not anticipate a significant impact to these businesses as there is a relatively low number of current commercial driver's license holders that would be affected while the department advances through the regulatory process.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: This action does not impose any costs on private persons or businesses. As explained above, this action may indirectly impacts business if a driver, who is employed by a business, is not able to provide sufficient proof of legal presence, resulting in the loss of his or her commercial driver's license. While the business and affected private person may be impacted by the loss of employment, this action does not impose any costs that would contribute to that loss.
- Effect on Housing Costs: None.
- Local Agency/School District Mandates: The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

- **Small Business Impact:** This proposed action may impact small business that employ commercial driver's license holders to transport goods or services. The department does not anticipate a significant impact to these small businesses as there is a relatively low number of current commercial driver's license holders that would be affected while the department advances through the regulatory process.

ECONOMIC IMPACT ASSESSMENT (Government Code section 11346.3)

The department has made the following determinations related to this proposed regulatory action:

- **Creation or Elimination of Jobs Within the State of California**

This proposed action will not only create jobs within California, but also intends to fix a problem that may lead to the elimination of jobs in California. If a commercial driver is not able to provide sufficient proof of legal presence, that driver will be unable to maintain his or her commercial driver's license. A driver's failure to maintain a commercial driver's license will likely mean that he or she is no longer able to drive as part of his or her employment. This action amends the regulation to allow for these affected drivers to provide proof of legal presence and, in turn, maintain their commercial driver's license.

- **Creation or Elimination of Existing Businesses Within the State of California**

This proposed action is unlikely to create or eliminate businesses within California. While it is possible that there may be some commercial driver's that suffer the loss of their commercial driver's license, the department does not anticipate a significant impact to businesses as there is a relatively low number of current commercial driver's license holders that would be affected while the department advances through the regulatory process. Once the regulations are approved and effective, those affected drivers will be able to reapply for licensure.

- **Expansion of Business Currently Doing Business Within the State of California**

The department does not anticipate that this action will expand businesses currently doing business within the State of California. This action identifies legal presence documents that an applicant can use when applying for a commercial driver's license or commercial learner's permit. None of the provisions in this proposed adoption are likely to lead to the expansion of businesses currently doing business in California.

- **Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety and the State's Environment**

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This action implements and makes specific state and federal requirements to ensure commercial drivers can establish legal presence in the United States. This action is unlikely to impact the welfare or health of California residents, worker safety or the environment. Requiring a commercial driver's license applicant to provide specific documents as proof of legal presence may reduce instances of fraud and ensure that only qualified drivers are issued commercial driver's license, thereby ensuring the safety of the public.